No. 79-101

In the Supreme Court of the United States

OCTOBER TERM, 1979

BARBARA BLUM, ET AL., PETITIONERS

v.

JOANNE SWIFT, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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This brief is filed in response to the Court's invitation of October 1, 1979.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-3a) is reported at 598 F. 2d 312. The opinions of the district court (Pet. App. 4a-15a, 16a-30a) are reported at 461 F. Supp. 578 and 450 F. Supp. 983.

JURISDICTION

The judgment of the court of appeals was entered on April 25, 1979. The petition for a writ of certiorari was filed on July 20, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a policy of the State of New York which presumes that the needs of an AFDC family are automatically reduced when the family resides with an ineligible related child who is supported by non-welfare sources violates the Social Security Act and regulations promulgated thereunder.

STATEMENT

1. The Aid to Families With Dependent Children (AFDC) program was enacted by Congress in 1935 and is established in Title IV-A of the Social Security Act, 42 U.S.C. 601 *et seq.* The purpose of the AFDC program is to encourage the care of needy dependent children in their own homes or those of relatives in order to help maintain and strengthen family life and to assist the parents or relatives with whom they are living to attain self-sufficiency. 42 U.S.C. 601. Participation in the AFDC program is optional with the states, but states that elect to provide AFDC benefits to their residents receive substantial reimbursement from the federal government on a matching fund basis. 42 U.S.C. 603(a). Before states may participate in the AFDC program, they must submit for the approval of the Secretary of Health, Education, and Welfare a State Plan that meets all the requirements of Title IV-A and its implementing regulations.

The State of New York participates in the AFDC program and has an approved State Plan.[1] Under its AFDC program, New York has established a three-part standard of need on which eligibility for AFDC benefits

[1]The challenged proration policy invalidated by the lower courts in this case was never submitted to or otherwise approved by the Secretary of HEW.

is based. First, there is a statewide standard of regularly recurring monthly needs based on family "household" size. This standard is based on United States Department of Labor (DOL) statistics which demonstrate that per capita living costs vary with changes in household size. These variations are built into the statewide standard. Second, additions are made to the regularly recurring monthly needs of individual applicants for their actual shelter and heating bills, up to a fixed maximum based on "household" size. Finally, the costs of any special need requirements may be added. The resulting total is the applicant's eligibility standard of need. If the applicant family's adjusted income is less than the family's standard of need, then the family is entitled to AFDC payments.

In determining the needs of an AFDC family, the number of individuals included by the State in the AFDC "household" is ordinarily the same as the number designated by the applicant in the AFDC assistance unit. At the time respondents filed this action, however, there were a few situations in which the State would determine that the "household" size was greater than the AFDC assistance unit size. One such situation, which is presented by respondents in this suit, occurred when an AFDC family had residing with it a related child who had sufficient unearned income to make him or her ineligible for AFDC assistance. In this situation New York would increase the "household" size by the number of such non-eligible children residing with the AFDC family (Pet. App. 7a). The result was a larger need standard for the AFDC family than would have been the case had the need standard been based on the AFDC assistance unit size alone.

However, after having determined the increased need standard based on "household" size for an AFDC family that contained a non-eligible child, New York then reduced this need standard by the prorated per capita share of the needs represented by the ineligible child. The State's rationale for prorating was that, since the needs of the non-eligible child were being met from non-welfare sources, the standard of need should be reduced to exclude that child's prorated per capita needs. The resulting reduced need standard was then used as the basis for AFDC assistance to the family (Pet. App. 7a-8a, 11a). As the facts of respondents' cases demonstrate, the prorated need standard for an AFDC family containing an ineligible child can be less than the need standard that would be obtained if the family assistance unit excluded the ineligible child.

2. Respondents are two families of New York AFDC receipients. Between May 1975 and November 1975 respondent Swift received $398 per month in AFDC payments on behalf of herself and her two minor children, Michelle Swift and William Rooney. The monthly AFDC payment for respondent Swift and her family consisted of a $200 basic needs allowance for a three person household plus an actual rent expense of $198. As the result of a judicial support order, respondent Swift thereafter began receiving $150 per month in child support from her son's father. This amount was sufficient to make her son ineligible for public assistance. Respondent reported the receipt of the support money to the New York State Department of Social Services and, after administrative proceedings, her AFDC grant was reduced by one-third or $144.66 per

month.[2] This prorated reduction of one-third reflected the State's presumption that the needs of respondent's son were being met by his father's support payments (Pet. App. 5a).

3. On May 16, 1977, respondent Swift filed this suit in the United States District Court for the Southern District of New York to challenge the reduction in her AFDC payments.[3] She sought declaratory and injunctive relief and money damages.[4] The district court held that the State's prorationing policy was invalid and enjoined its further enforcement (Pet. App. 7a-14a). The court concluded that the policy of prorating the family's AFDC grant due to the presence in the household of a non-eligible child with independent support, without

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[2]Respondent's monthly benefit was computed as $289.34. This figure represented a $234 rent allowance for respondent's then actual rent for a household of three, plus a $200 basic needs allowance for a three person household, less $144.66, which represented the prorated amount of her son's per capita monthly needs (Pet. App. 5a). Respondent contended that her son should not have been included in the household and that her AFDC grant should have been $362, consisting of a $150 basic needs allowance for two people, plus a $212 maximum rent allowance for a two person household (*id.* at 6a).

[3]Respondent raised constitutional as well as statutory objections to the New York procedure. Federal jurisdiction over the constitutional claims was properly based on 28 U.S.C. 1343(3). See *Chapman* v. *Houston Welfare Rights Organization*, No. 77-719 (May 14, 1979), slip op. 1-10. However, the decisions below, which preceded this Court's decision in *Chapman*, did not rule on respondent's constitutional claims and did not consider whether pendent jurisdiction existed over the statutory claims. But see *Holley* v. *Lavine*, 605 F. 2d 638, 646-647 & n.12 (2d Cir. 1979).

[4]Respondent Roe was granted leave to intervene in the action (Pet. App. 28a). The facts of her case followed a pattern essentially identical to that of respondent Swift's claim (Pet. 3-4). The district court also certified the case as a class action (Pet. App. 14a n.1).

eliciting proof that the child's support payments actually contributed to the needs of the household, violated the Social Security Act and implementing federal regulations (*id.* at 7a-13a, citing 45 C.F.R. 233.20(a)(2)(viii), 233.90(a)).

The court of appeals affirmed, noting that the State's policy failed to provide for "an individual determination * * * that [the] child's income was applied to shared household expenses" (Pet. App. 3a) and was therefore invalid under *Van Lare* v. *Hurley*, 421 U.S. 338 (1975), and federal regulations (Pet. App. 3a).

4. On March 30, 1979, New York changed its administrative procedure for determining the needs of an AFDC family and amended various of its public assistance regulations (Pet. Reply Br. App. A).[5] Under the new policy and regulations, New York considers the number of persons contained in the "household" of an AFDC family to be the same as the number contained in the assistance unit designated by the applicant. Each applicant, however, must supply information regarding the income and resources of all persons residing in the dwelling unit and whether such income or resources are being used to meet the common needs (*id.* at 2). In determining the cash assistance to be provided, New York will consider as a "resource" to the AFDC family the lower per capita needs that result from the sharing of expenses with persons living in the dwelling unit who are not eligibile for AFDC assistance (*id.* at 5). The regulations provide a formula for computing the amount of this "resource," which is deducted from the AFDC family's need standard unless the applicant or recipient

[5]These amended regulations have not been approved by the Secretary as of the date of this filing.

can demonstrate that the "resource" is not available to the assistance unit. The new regulations were enacted to supersede the proration policy that is challenged in this action (Pet. Reply Br. 5-6).

DISCUSSION

The challenged New York AFDC policy is no longer in effect. It has been supplanted by a State regulation that apparently requires a more particularized inquiry before assistance payments are reduced due to the presence in the dwelling unit of a non-eligible individual. Although the end result of the computations under the new regulation may approximate that which would have obtained under the State's prior policy (see Pet. Reply Br. 5-6), it cannot be determined at this time precisely how the State will apply its new regulation in concrete factual circumstances. Because the challenged state policy has been replaced by the State of New York, and because it is impossible to adjudicate in this litigation the validity of the State's new regulation, further review of the decision in this case is unwarranted.

Moreover, as respondents point out (Br. in Opp. 9), the decision in this case does not conflict with any decision of this Court or the other courts of appeals. To the contrary, as the courts below concluded (Pet. App. 3a, 7a-13a), the State's now-abandoned policy shared the same vice as the regulations invalidated in *Van Lare* v. *Hurley*, 421 U.S. 338 (1975), in that the State improperly presumed that resources available to a non-eligible household member are also available to eligible members of the AFDC unit. The State's presumption thus conflicted with the regulations established by the Secretary to implement the requirements articulated in the *Van Lare* decision. See 45 C.F.R. 233.90(a) (Pet. App. 9a-13a).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

DECEMBER 1979